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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@dblaw.com

Office Action Summary

Application No.

10/815,191

Applicant(s)

BAGGA ET AL.

Examiner

Thomas Gyorfi

Art Unit

2435

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-17 and 19-27 remain for examination. The amendment filed 8/20/10 amended claims 1, 2, 16, 17, 19, 21, 25, and 26.

Response to Arguments

2. Applicant's arguments filed 8/20/10 have been fully considered but they are not persuasive. First, with respect to Applicant's argument against art allegedly not on the record (amendment, page 8), Applicant argues:

The Office appears to rely on a proposition that search engines do not churn out thousands of hits without analysis of relevance to the query initially provided by the user. In doing so, the Office impermissibly relies on art that is not of record. (See BPAI Decision on Appeal 2009-003351, page 17.) The cited prior art does not discuss the inner workings of search engines.

Examiner submits that Applicant has misunderstood the point that Examiner was trying to make. The Examiner was simply alluding to the non-controversial fact that search engines, upon being queried by a user, typically find a plurality of web pages comprising the keyword(s) present in one's search query and returns the results to said user. Although the Examiner would readily admit that the question of how best to appropriately rank the results in order of relevance to said user is a non-trivial problem, for purposes of the claimed invention the order of the results is irrelevant because the claimed invention looks solely at the number of hits returned; the claimed invention does not care why or in what context the password, string, and other key words that might be part of the query would be found in each result(s), just so long as a requisite plurality of results with all the keywords in the original query are found. Although the Examiner had believed that the basic functionality of search engines was generally well understood by

the general public – let alone by those of ordinary skill in the art – nevertheless for Applicant's edification the Examiner has included a copy of the Help page for Google *circa* 1999 which confirms that it was common knowledge that as a default behavior the well known Google search engine returns only those pages which match all the keywords presented in the query (page 1, "Automatic AND"; see also the last bullet point on page 1). In other words, when one presents a search engine with a query, the default expectation one would have is that every result returned comprises at least one instance of each keyword from said query. Contrary to Applicant's previous arguments to the contrary, there is no need to re-examine the results returned by the search engine to weed out results that lack one or more of the keywords. This leads to the Examiner's second point: although the Applicant stresses that "the string recited by claim 1 need not be submitted to the search engine as part of the search query" (amendment, page 8, last line), neither does the claim nor the Applicant require that the search query is exclusively limited to the "keyword derived from the proposed password"; to the contrary, search queries with a plurality of keywords are a requirement in at least some dependent claims (e.g. claim 2). Thus, since Wong as previously cited clearly teaches using querying a search engine for various strings based on rules for selections of passwords to try and determine if a password is weak, then it would essentially follow that the incorporation of this aspect of Wong's invention into the P-Synch tool (which has access to the proposed password and must necessarily provide it to any plugin implementing a new password rule: P-Synch: page 127, "10.19.1 Adding new rules with a plugin program", beginning at "After a user selects a new password...") would logically

result in integrating the proposed password (keeping in mind that under the broadest reasonable interpretation permitted by Applicant's specification, the proposed password itself qualifies as a "keyword derived from the proposed password", albeit in the most trivial fashion: again see Applicant's claim 2) into the queries already being performed by Wong, in order to realize the improved result of detecting weak passwords *before* a user has the chance to establish them as the new password to one's account(s); instead of detecting them after the fact, as per the original disclosure by Wong.

3. In response to Applicant's arguments against the references individually – and in particular the Eitel reference – one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As discussed above, the combination of P-Synch and Wong disclose already disclose every limitation except using the number of returned results as a threshold to determine if the search succeeded or failed. Thus, Eitel was cited by the Examiner as an example of the general ability to search for arbitrary information on the Internet, including the ability to declare a search as unsuccessful if too few records are returned by a particular query (see where cited). Applicant's argument(s) that Eitel fails to specifically teach searching for passwords in any capacity is thus not persuasive, as Applicant assumes that a person of ordinary skill in the art would be led only to those elements of prior art designed to solve the same problem as that solved by the Applicant. However, the Supreme Court makes it clear that this is an impermissibly narrow interpretation of obviousness:

The first error of the Court of Appeals in this case was to foreclose this reasoning by holding that courts and patent examiners should look only to the problem the patentee was trying to solve. 119 Fed. Appx., at 288. The Court of Appeals failed to recognize that the problem motivating the patentee may be only one of many addressed by the patent's subject matter. The question is not whether the combination was obvious to the patentee but whether the combination was obvious to a person with ordinary skill in the art. Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.

The second error of the Court of Appeals lay in its assumption that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem. *Ibid.* The primary purpose of Asano was solving the constant ratio problem; so, the court concluded, an inventor considering how to put a sensor on an adjustable pedal would have no reason to consider putting it on the Asano pedal. *Ibid.* Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle. Regardless of Asano's primary purpose, the design provided an obvious example of an adjustable pedal with a fixed pivot point; and the prior art was replete with patents indicating that a fixed pivot point was an ideal mount for a sensor. The idea that a designer hoping to make an adjustable electronic pedal would ignore Asano because Asano was designed to solve the constant ratio problem makes little sense. A person of ordinary skill is also a person of ordinary creativity, not an automaton.

KSR v. Teleflex, 550 USPQ2d at 1397; emphasis Examiner's. Although Eitel only describes specific examples of searching for airline tickets, hotels (column 3) and real estate listings (column 5), Eitel is not limited to these fields of endeavor but instead can apply to any and all types of searches (col. 9, lines 30-40); and since not only would a common search engine like Google present the number of results returned along with links to said results (see Google Help, page 1, "Do more than query") but also that Eitel teaches where it may be advantageous to disregard searches that produce too few results, so too would it have been obvious for one of ordinary skill in the art to disregard password searches of the type conducted by P-Synch (as modified by a Wong plugin), if such searches were to produce an insufficient number of desired results.

Claim Objections

4. Applicant is advised that should claim 1 be found allowable, claims 17 and 19 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). In this case, both claims 17 & 19 simply use alternative phraseology to restate the "rejecting the proposed password" limitation; as such, both claims are needlessly redundant and do not further limit the parent claim(s).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-16 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over "P-Synch Installation and Configuration Guide" (hereinafter, "P-Synch") in view of Wong (U.S. Patent Application Publication 2005/0102534) in view of Eitel (U.S. Patent 7,043,521).

Regarding claims 1, 21, and 27:

P-Synch discloses a method, apparatus, and article of manufacture for evaluating a password proposed by a user, comprising: receiving a proposed password from a user (page 4, "3. Users select a new password..."); and rejecting the proposed password based on a rule for the selection of passwords (page 4, "4. P-Synch checks the new password..."; cf. pages 124-126 for sample rules).

P-Synch does not explicitly disclose performing an Internet search using a query containing one or more keywords derived from said proposed password, and rejecting the password based on the results returned by said search engine. However, it is observed that P-synch, while already possessing a defined set of rules to measure a proposed password's strength, can nevertheless be extended by allowing an admin to add new rules via a plug-in (page 127, section 10.19.1 "Adding new rules with a plug-in program"). In that vein, Wong discloses a related security auditing tool including *inter alia* functionality to test passwords according to various security criteria, said functionality in turn including *inter alia* querying one or more Internet search engines to determine if a password can be correlated to a user according to any number of criteria (paragraphs 0108-0110 and 0127). It would have been obvious to one of ordinary skill in the art to develop a plug-in for P-Synch that implements the above functionality disclosed by Wong's automated password cracker to determine if a proposed new password can be correlated to a user, as the technique is clearly within the capabilities of one of ordinary skill in the art.

Although Wong discloses wherein his search-engine-employing password searcher may be recursively iterated to continue churning up multiple hits that could inadvertently reveal a user's password (paragraph 0110), it is unclear if this step is taken only when the previous queries failed to find the password or whether the system is trying to confirm that it has found one's password by finding multiple pages containing it. Nevertheless, Eitel discloses a related technique to be employed during a search for arbitrary information on the Internet wherein the search will fail if, for example, the search comprised too few hits to satisfy a pre-established threshold (col. 6, line 46 – col. 7, line 3). It would have been obvious to one of ordinary skill in the art to set a minimum threshold for search hits for determining if the Wong plug-in has found one's password, as the technique is clearly within the capabilities of one of ordinary skill in the art, and one would have had a good reason to pursue the known options within one's grasp. If setting a minimum threshold for search hits would lead to anticipated success, it would be the product not of innovation but of ordinary skill and common sense.

Regarding claims 2 and 22:

P-Synch in view of Wong further discloses wherein the proposed password comprises a telephone number (P-Synch: pages 83 & 200; Wong: paragraph 0109); the search query comprises (i) a user name that is associated with the proposed password and (ii) the proposed password (P-Synch: page 127, "10.19.1 Adding new rules with a plugin program"; Wong: Ibid); and the string is an identifier of a person (i.e. the aforementioned username: P-Synch & Wong, Ibid).

Regarding claim 3:

P-Synch further discloses wherein said one or more predefined correlation rules evaluate whether that said proposed password can be quantitatively correlated with said user (i.e. the password is similar to the username: page 126, as indicated).

Regarding claims 4, 6, 23, and 24:

P-Synch in view of Wong further discloses wherein said proposed password is comprised of a proposed answer and a proposed hint (P-Synch: the user Q&A profiles on pages 83 and 199-200), and wherein the proposed answer can be correlated with/obtained from the proposed hint in a particular relation (Wong: pars. 0108-0110).

Regarding claim 5:

P-Synch further discloses wherein said particular relation is selected from the group consisting essentially of self, family member, co-author, teammate, colleague, neighbor, community member, or household member (pages 83, 199, & 200).

Regarding claims 7 and 25:

P-Synch further discloses wherein said proposed password is an identifying number (e.g. PIN number, e.g. page 6, "2.2.2 Authentication Systems").

Regarding claims 8 and 26:

P-Synch in view of Wong further discloses wherein the rule evaluates whether the identifying number identifies a person in a particular relationship to the user (P-Synch: "Family member phone number that is not your own", pages 83 and 200; Wong: paragraph 0109).

Regarding claim 9:

P-Synch further discloses wherein said one or more pre-defined correlation rules evaluate whether said identifying number is a top N most commonly used identifying number (in the embodiment where the password is a PIN, the password history rules on pages 126 and 127).

Regarding claim 10:

P-Synch in view of Wong further discloses wherein the rule evaluates whether the identifying number identifies a top N commercial entity (P-Synch: "radio station dial number" at pages 83 and 200; Wong: paragraph 0109).

Regarding claim 11:

P-Synch in view of Wong further discloses wherein the rule evaluates whether the identifying number identifies the user (P-Synch: "Your SSN", Ibid; Wong: Ibid).

Regarding claims 12-14:

P-Synch further discloses wherein said identifying number is a portion of a telephone number, address, or social security number (pages 83 and 200).

Regarding claim 15:

P-Synch further discloses wherein said proposed password is a word (page 125, the dictionary rules).

Regarding claim 16:

Eitel further discloses wherein the search engine tool retrieves a plurality of web pages (col. 6, *Ibid*; see also col. 1, lines 43-50 regarding this being generally very well known in the art).

Regarding claims 17 & 19:

These claims are rejected for substantially similar reasons as discussed in the rejection(s) of claims 1 & 16 *supra*.

Regarding claim 20:

P-Synch and Wong further disclose wherein said step of ensuring a correlation further comprises the step of performing a number classification (P-synch: the digits rules on page 125), wherein the number classification identifies usage of one or more numbers found in a web page (Wong, paragraph 0109).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent 6,285,999 to Page.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Gyorfi whose telephone number is (571)272-3849. The examiner can normally be reached on 9:30am - 6:00pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TAG
10/20/10
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